Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Appeals for the Federal Circuit and the United States Court of International Trade

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This issue contains:

THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decision

19 CFR Part 4

(T.D. 84-63)

Customs Regulations Amendment Adding St. Vincent and The Grenadines to the List of Nations Entitled to Special Tonnage Tax Exemption

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This rule amends the Customs Regulations by adding St. Vincent and The Grenadines to the list of nations whose vessels are exempted from the payment of any higher tonnage duties than are applicable to vessels of the U.S. and from the payment of light money. The Department of State informed Customs that there is satisfactory evidence that no discriminatory duties of tonnage or imposts are being imposed in ports of St. Vincent and The Grenadines upon vessels belonging to citizens of the U.S. or on their cargoes. Therefore, privileges regarding exemption from the payment of discriminatory duties upon vessels registered in St. Vincent and The Grenadines which enter U.S. ports are granted by the U.S. to take effect retroactively to October 27, 1979, the date that St. Vincent and The Grenadines became independent.

EFFECTIVE DATE: October 27, 1979.

FOR FURTHER INFORMATION CONTACT: Donald H. Reusch, Carriers, Drawback and Bonds Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202-566-5706).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Generally, the United States imposes regular and special tonnage taxes, and a duty of a specified amount per ton, known as "light money", on all foreign vessels which enter United States ports (46 U.S.C. 121, 128). However, vessels of a foreign nation may be exempted from the payment of special tonnage taxes and light money upon presentation of proof satisfactory to the President that

no discriminatory duties of tonnage or imposts are imposed by that foreign nation on U.S. vessels or their cargoes (46 U.S.C. 141). Section 4.22, Customs Regulations (19 CFR 4.22), lists those nations whose vessels have been exempted from the payment of any higher tonnage duties than are applicable to vessels of the U.S. and from the payment of light money.

By letters dated September 23, and December 7, 1983, the Department of State informed the Customs Service that the Government of St. Vincent and The Grenadines has not imposed any discriminatory duties or imposts on either U.S. vessels or their cargoes since that nation gained independence on October 27, 1979. The Department of State is of the opinion that satisfactory evidence has been furnished to establish the reciprocity required in section 4.22, Customs Regulations. Therefore, the State Department recommended that St. Vincent and The Grenadines be added, effective retroactively to October 27, 1979, to the list of nations whose vessels are exempted from the payment of the special tonnage tax and the payment of light money. On January 10, 1984, the Director, Carriers, Drawback and Bonds Division, determined that, effective October 27, 1979, St. Vincent and The Grenadines should be added to the list in section 4.22.

By virtue of the authority vested in the President by section 4228 of the Revised Statutes, as amended (46 U.S.C. 141), the President has delegated the authority to grant this exemption to the Secretary of the Treasury by E.O. No. 10289, September 17, 1951, as amended by E.O. No. 10882, July 18, 1960 (3 CFR, 1959–1963 Comp., Ch. II). By Treasury Department Order 165–25, the Secretary of the Treasury delegated authority to the Commissioner of Customs to prescribe regulations relating to sections 4.22 and other sections of the Customs Regulations relating to lists of nations entitled to preferential treatment in Customs matters because of reciprocal privileges accorded to vessels and aircraft of the U.S. Subsequently, by Customs Delegation Order No. 66 (T.D. 82–201), dated October 13, 1982, the Commissioner delegated authority to grant this exemption and to amend these sections to the Assistant Commissioner (Commercial Operations), who redelegated this authority to the Director, Office of Regulations and Rulings, who then redelegated it to the Director, Regulations Control and Disclosure Law Division.

FINDING

On the basis of the information received from the Secretary of State, as described above, it has been determined that the United States is in possession of satisfactory evidence regarding the absence of discriminatory duties of tonnage or imposts imposed on U.S. vessels in ports of St. Vincent and The Grenadines. Therefore, St. Vincent and The Grenadines is added to the list of nations whose vessels are exempted from the payment of the special tonnage tax and the payment of light money as of October 27, 1979.

LIST OF SUBJECTS IN 19 CFR PART 4

Customs duties and inspection, cargo vessels, maritime carriers, vessels.

REGULATIONS AMENDMENT

To reflect this change, section 4.22, Customs Regulations (19 CFR 4.22), is amended by inserting, in alphabetical order between "Sri Lanka" and "Surinam, Republic of", the words "St. Vincent and The Grenadines." to the list of nations entitled to exemptions from special tonnage taxes.

(R.S. 251, as amended, 4219, as amended, 4228, as amended, 4255, as amended, sec. 3, 23 Stat. 119, as amended, sec. 624, 46 Stat. 759, (19 U.S.C. 66, 1624, 46 U.S.C. 5, 121, 128, 141))

INAPPLICABILITY OF PUBLIC NOTICE AND DELAYED EFFECTIVE DATE REQUIREMENTS

Because this amendment merely implements a statutory requirement and involves a matter in which the public is not particularly interested, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure thereon are unnecessary. Further, for the same reasons good cause exists for dispensing with a delayed effective date under 5 U.S.C. 553(d)(1).

INAPPLICABILITY OF THE REGULATORY FLEXIBILITY ACT

This document is not subject to the provisions of section 603 and 604 of Title 5, United States Code, as added by section 3 of Pub. L. 96-354, the "Regulatory Flexibility Act." That Act does not apply to any regulation such as this for which a notice of proposed rulemaking is not required by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) or any other statute.

EXECUTIVE ORDER 12291

This amendment does not meet the criteria for a major regulation as defined in section 1(b) of E.O. 12291. Accordingly, a major impact analysis is not required.

DRAFTING INFORMATION

The principal author of this document was James S. Demb, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Dated: March 19, 1984.

B. JAMES FRITZ,
Director,
Regulations Control and Disclosure Law Division.

[Published in the Federal Register, March 27, 1984 (49 FR 11622)]

U.S. Customs Service

General Notices

Application for Recordation of Trade Name: "Zimmer, Inc."

AGENCY: U.S. Customs Service, Department of the Treasury

ACTION: Notice of Application for Recordation of Trade Name

SUMMARY: Application has been filed pursuant to section 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "ZIMMER, INC." used by Zimmer, Inc., a corporation organized under the laws of the State of Delaware, located in Warsaw, Indiana 46580.

The application states that the trade name is used in connection with the marketing of orthopaedic, surgical, patient-care and hospital products manufactured in the United States.

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the Federal Register.

DATE: Comments must be received on or before (60 days from date of publication).

ADDRESS: Written comments should be addressed to the Commissioner of Customs, Attention: Entry, Licensing and Restricted Merchandise Branch, 1301 Constitution Avenue, NW., Room 2417, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Harriet Lane, Entry, Licensing and Restricted Merchandise Branch, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202-566-5765).

Dated: March 19, 1984.

EDWARD T. ROSSE
(For Donald W. Lewis, Acting Director,
Entry Procedures and Penalties Division).

[Published in the Federal Register, March 27, 1984 (49 FR 11743)]

Application for Recordation of Trade Name: "The Drackett Company"

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of Application for Recordation of Trade Name.

SUMMARY: Application has been filed pursuant to section 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "THE DRACKETT COMPANY" used by The Drackett Company, a corporation organized under the laws of the State of Delaware, located at 5020 Spring Grove Avenue, Cincinnati, Ohio 45232.

The application states that the trade name is used in connection with the following merchandise manufactued in the United States: household care products, including preparations for windows, floors, tile, etc.; furniture and furniture polishes; drain cleaners; air deodorants and disinfectants, etc.; mops and brooms.

Before final action is taken on the application, consideration will be given to any relevant data, views, or argumemts submitted in writing by any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the Federal Register.

DATE: Comments must be received on or before (60 days from date of publication).

ADDRESS: Written comments should be addressed to the Commissioner of Customs, Attention: Entry, Licensing and Restricted Merchandise Branch, 1301 Constitution Avenue, NW., Room 2417, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Harriet Lane, Entry, Licensing and Restricted Merchandise Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–5765).

Dated: March 19, 1984.

EDWARD T. ROSSE
(For Donald W. Lewis, Acting Director,
Entry Procedures and Penalties Division).

[Published in the Federal Register, March 27, 1984 (49 FR 11743)]

Application for Recordation of Trade Name: "Westwood Pharmaceuticals Inc."

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of Application for Recordation of Trade Name.

SUMMARY: Application has been filed pursuant to section 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "WESTWOOD PHARMACEUTICALS INC.," a corporation organized under the laws of the State of Delaware, located at 468 Dewitt Street, Buffalo, New York 14213.

The application states that the trade name is used in connection with a wide range of dermatological products manufactured in the United States.

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the Federal Register.

DATE: Comments must be recived on or before (60 days from date of publication).

ADDRESS: Written comments should be addressed to the Commissioner of Customs, Attention: Entry, Licensing and Restricted Merchandise Branch, 1301 Constitution Avenue, NW., Room 2417, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Harriet Lane, Entry, Licensing and Restricted Merchandise Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–5765).

Dated: March 19, 1984.

EDWARD T. ROSSE
(For Donald W. Lewis, Acting Director,
Entry Procedures and Penalties Division).

[Published in the Federal Register, March 27, 1984 (49 FR 11743)]

United States Court of International Trade

One Federal Plaza

New York, N.Y. 10007

Chief Judge

Edward D. Re

Judges

Paul P. Rao
Morgan Ford
James L. Watson
Nils A. Boe
Gregory W. Carman
Jane A. Restani

Senior Judges

Frederick Landis

Herbert N. Maletz

Bernard Newman

Samuel M. Rosenstein

Clerk

Joseph E. Lombardi

Decisions of the United States Court of International Trade

(Slip Op. 84-16)

ALLEGHENY LUDLUM STEEL CORPORATION, ET AL., PLAINTIFFS, *v.* UNITED STATES, DEFENDANT, BRITISH STEEL CORPORATION, ET AL., DEFENDANTS-INTERVENORS

Court No. 83-7-01035

Before BERNARD NEWMAN, *Senior Judge.*

Countervailing Duties—Stainless Steel Sheet, Strip and Plate From the United Kingdom—Timeliness of Action

Action contesting ITA's final affirmative countervailing duty determination respecting valuation of loan fund subsidy prior to publication of a countervailing duty order as to stainless steel sheet and strip from the United Kingdom is premature as to that aspect of the action, which must be severed and dismissed, as contended by defendant. However, valuation issue was timely raised respecting stainless steel plate, for which product a countervailing duty order was published.

Portion of action contesting ITA's final negative determinations respecting stainless steel sheet, strip and plate from the United Kingdom that certain benefits bestowed on British steel producer were not countervailable subsidies was untimely (filed too late) where the action was not commenced within thirty days after publication of the final determinations. Accordingly, intervenors' motion to sever and dismiss action contesting negative determinations is granted.

ITA's determination respecting valuation of loan fund subsidy granted to British steel producer by United Kingdom is an affirmative determination, while findings that certain government benefits or programs were not subsidies are negative determinations under countervailing duty law. For the purpose of judicial review under 19 U.S.C. § 1516a, ITA's affirmative and negative determinations are severable and must be contested within the statutory time periods prescribed by the statute. Final affirmative determinations are not judicially reviewable until after the publication of a countervailing duty order; final negative determinations must be contested within 30 days of publication.

[Intervenors' motion to sever and dismiss granted; defendant's motion to sever and dismiss granted in part; defendant's alternative motion to sever and suspend denied.]

(Dated: March 7, 1984)

Collier, Shannon, Rill & Scott, Esqs. (*David A. Hartquist* and *Paul C. Roenthal, Esqs.* of counsel) for plaintiffs.

Richard K. Willard, Acting Assistant Attorney General, *David M. Cohen,* Director, Commercial Litigation Branch and *Sheila N. Ziff, Esq.* for defendant.

Steptoe & Johnson Chartered (*Richard O. Cunningham, Charlene Barshefsky* and *Alice L. Mattice, Esqs.* of counsel) for defendants-intervenors.

BERNARD NEWMAN, *Senior Judge:*

INTRODUCTION

The Court is again faced with a jurisdictional dispute focusing upon the time constraints for commencing an action for review of countervailing duty determinations.

Plaintiffs, domestic steel producers, seek review of the final countervailing duty determinations and order of the International Trade Administration, United States Department of Commerce ("ITA") issued pursuant to 19 U.S.C. § 1671d and § 1671e in its investigation of certain stainless steel products from the United Kingdom. Jurisdiction is alleged under 19 U.S.C. § 1516a and 28 U.S.C. § 1581(c). Defendants-Intervenors are the exporter and importer of the steel products in question and were parties to the ITA proceedings for which plaintiffs seek judicial review.

Presently before the Court are:

1. Defendant's motion to sever and dismiss this action as to stainless steel sheet and strip on the ground that the action was commenced prematurely (*viz.,* before publication of a countervailing duty order concerning those products). Alternatively, defendant moves for suspension of that portion of this case relating to stainless steel sheet and strip pending resolution of another action brought by plaintiff (Court No. 83-7-01027) challenging the final negative injury determination by the International Trade Commission ("ITC") respecting those products. Defendant concedes that the action was timely filed insofar as it contests ITA's final affirmative determinations respecting stainless steel plate for which ITA published a countervailing duty order.

2. Intervenors' motion to sever and dismiss the action with prejudice respecting those counts of the complaint challenging final negative countervailing duty determinations, on the basis that as to such negative determinations this action was filed too late (*viz.,* more than thirty days after publication of the final determinations).[1]

BACKGROUND

On April 27, 1983 ITA published its final "affirmative" countervailing duty determinations pursuant to 19 U.S.C. § 1671d covering imports of stainless steel sheet, strip and plate from the United Kingdom (48 Fed. Reg. 19048). Although denominated singularly as

[1] Intervenors raised the same issue as an affirmative defense in their answer.

an "affirmative determination," ITA in fact found that certain government benefits or programs conferred countervailable subsidies while others did not. Further, where ITA found that a subsidy existed, the value or amount of subsidy was calculated. On June 15, 1983 ITC published its final determinations under 19 U.S.C. § 1671d that imports of stainless steel plate were materially injuring domestic producers of that product, but that imports of stainless steel sheet and strip were not causing or threatening to cause material injury to a United States industry (48 Fed. Reg. 27454).[2] Accordingly, on June 23, 1983 ITA published its countervailing duty order covering only stainless steel *plate* from the United Kingdom (48 Fed. Reg. 28690).[3]

On July 14, 1983 plaintiffs commenced this action challenging ITA's countervailing duty order covering stainless steel plate, published on June 23, 1983, and ITA's final determinations published on April 27, 1983 as to stainless steel sheet, strip and plate. The gravamen of plaintiffs' complaint is that with respect to stainless steel sheet, strip and plate: (1) ITA erred in determining that certain government benefits or programs did *not* confer countervailable subsidies; and (2) ITA undervalued the benefit attributable to a loan program found to be a subsidy.

OPINION

We are presented with a threshold jurisdictional issue revolving around the question of whether this action was filed within the time limitations specified in section 516A of the Tariff Act of 1930, as amended, 19 U.S.C. 1516a. The pertinent provisions of that statute read:

> (2) Review of determinations on record.
>
> (A) In general. Within thirty days after the date of publication in the Federal Register of—
>
> (i) notice of any determination described in clause (ii), (iii), (iv), or (v) of subparagraph (B), or
>
> (ii) an antidumping or countervailing duty order based upon any determination described in clause (i) of subparagraph (B),
>
> an interested party who is a party to the proceeding in connection with which the matter arises may commence an action in the United States Court of International Trade by filing a summons, and within thirty days thereafter a complaint, each with the content and in the form, manner, and style prescribed by the rules of that court, contesting any factual findings or legal conclusions upon which the determination is based.

[2] As mentioned above, plaintiffs have contested ITC's negative injury determination regarding stainless steel sheet and strip in Court No. 83-7-01027; that action is presently *sub judice*.

[3] Intervenors have sought review of ITA's final affirmative countervailing duty determinations in another pending action, *British Steel Corporation, et al.* v. *United States*, Court No. 83-7-01032.

(B) Reviewable determinations. The determinations which may be contested under subparagraph (A) are as follows:

(i) Final affirmative determinations by the Secretary and by the Commission under section 303 [19 U.S.C. 1303] of this title, or by the administering authority and by the Commission under section 705 or 735 of this Act [19 U.S.C. 1671d or 1673d].

(ii) A final negative determination by the Secretary, the administering authority, or the Commission under section 303, 705, or 735 of this Act [19 U.S.C. 1303, 1671d, or 1673d].

Plaintiffs maintain that following publication of ITC's final negative injury determination concerning stainless steel sheet and strip, judicial economy in the instant action dictates that they be permitted to seek review of ITA's final subsidy determinations respecting stainless steel sheet and strip, as well as plate, by commencing an action within thirty days of ITA's countervailing duty order covering only stainless steel plate. Accordingly, plaintiffs contend that this action was timely filed as to stainless steel sheet, strip and plate and should be decided on the merits, or alternatively, that the Court should suspend the action pending resolution of Court No. 83–7–01027, as alternatively requested by defendant.

Defendant posits that ITA's final determinations published on April 27, 1983 are a unitary and indivisible "affirmative determination" not subject to judicial review under section 1516a until after publication of a countervailing duty order. According to defendant, the jurisdictional defect in this case respecting stainless steel sheet and strip exists by reason of the fact that ITC's final injury determinations published on June 15, 1983, although affirmative as to stainless steel plate, were negative with respect to stainless steel sheet and strip. Consequently, insists defendant, since no countervailing duty order covering stainless steel sheet and strip has yet been published, this action was filed prematurely as to those products and must be severed and dismissed for lack of jurisdiction under 19 U.S.C. 1516a and 28 U.S.C. 1581(c).

Intervenors also seek dismissal for lack of jurisdiction, but contend that the challenged final determinations by ITA are essentially negative, and inasmuch as the action was not commenced within thirty days after the date of publication of the final determinations, this action was filed too late under section 1516a.

The complaint (paragraph 9) sets forth the following claims respecting ITA's final countervailing duty determinations on stainless steel sheet, strip and plate from the United Kingdom (emphasis added):

(a) Commerce erred by determining that British Steel Corporation was creditworthy between fiscal years 1971/72 through 1976/77. Because of this erroneous determination, *Commerce failed to consider as subsidies* extensive benefits bestowed upon

British Steel Corporation by the British Government between 1971 and 1977;

(b) Commerce failed to correctly calculate the subsidies bestowed upon British Steel Corporation through the British Government's National Loans Fund ("NLF") by erroneously determining that the benefits of the NLF *were not subsidies during one period* and by undervaluing the subsidy in another period;

(c) Commerce *failed to* properly calculate and *consider as subsidies* the subsidies bestowed upon British Steel Corporation by loans from the European Coal and Steel Community; and

(d) Commerce erroneously determined that British Steel Corporation *did not receive a subsidy* from preferential rail rates.

It is evident that except for the allegation in paragraph 9(b) of the complaint concerning the undervaluation of the NLF subsidy, the thrust of plaintiffs' claims is ITA's erroneous determinations that certain government benefits or programs did not confer subsidies.

In support of their motion to dismiss, intervenors cite a line of recent decisions in which the Court held that: (1) a valuation or quantification by ITA of a subsidy is an affirmative determination, which may not be contested until after the publication of a countervailing duty order; (2) a determination that particular government benefits or programs are not subsidies or that a particular producer did not receive a subsidy is a negative determination; (3) affirmative and negative determinations contained in a final "affirmative" determination by ITA are severable for the purpose of seeking judicial review thereof in this Court; and (4) in a challenge to the findings upon which a final negative determination by ITA is based, this Court lacks jurisdiction if the action is not commenced within thirty days after the date of publication of the final determination. *Bethlehem Steel Corporation* v. *United States,* 6 CIT—, Slip Op. 83-97, 571 F. Supp. 1265 (September 29, 1983), *reh'g denied* November 29, 1983, CAFC Appeall No. 84-714 *pending; United States Steel Corp., et al.* v. *United States, et al.,* 5 CIT—, Slip Op. 83-65 (June 28, 1983); *United States Steel Corporation* v. *United States, et al.,* 5 CIT—, Slip Op. 83-59 (June 16, 1983); and *Republic Steel Corporation, et al.* v. *United States, et al.,* 4 CIT—, Slip Op. 82-55 (July 15, 1982). *But see* unpublished order of Judge Maletz in *American Spring Wire Corporation, et al.* v. *United States,* Court No. 83-3-00334 entered on August 19, 1983, granting defendant's alternative motion for suspension of the action. As indicated *supra, Bethlehem Steel* (decided by Judge Boe) is now before our Appellate Court. Further, the *United States Steel* and *Republic Steel* decisions (by Judge Watson) were recently "vacated as moot" in accordance with the motion by plaintiffs for voluntary dismissal. See *United States Steel Corporation, Republic Steel Corporation, et al.* v. *United States,* et al., 7 CIT—, Slip Op. 84-12 (February 24, 1984).

Predicated upon the above-cited opinions by Judges Watson and Boe, I conclude:

(1) ITA's valuation of the NLF forgiveness subsidy is a final affirmative determination that is contestable under section 1516a within thirty days after publication of a countervailing duty order.[4] Accordingly, the valuation issue respecting the NLF subsidy is properly before the Court as to stainless steel plate for which ITA published a countervailing duty order on June 23, 1983 (48 Fed. Reg. 28690). However, judicial review of the valuation issue respecting stainless steel sheet and strip, for which products no countervailing duty order has yet been published (due to ITC's negative injury determination), is premature at this juncture.

(2) The other claims in paragraph 9 of the complaint contest final negative determinations by ITA (*viz.*, that benefits or programs did not confer subsidies).[5] Inasmuch as plaintiffs did not commence this action within thirty days of the publication of the final negative determinations, this action is untimely (too late) with respect to those determinations. Accordingly, such claims must be severed from the action and dismissed with prejudice, as urged by intervenors.[6]

For the foregoing reasons, it is hereby ordered that:

(1) Defendant's motion to sever and dismiss the action as premature respecting stainless steel sheet and strip from the United Kingdom (for which products no countervailing duty order has been issued) is granted, but only to the extent of plaintiffs' allegation in paragraph 9 of their complaint that ITA undervalued the NLF subsidy.

(2) Intervenors' motion to sever and dismiss with prejudice all other claims in paragraph 9 of the complaint that challenge final negative countervailing duty determinations is granted. Accordingly, plaintiff's claims concerning the following final negative countervailing duty determinations by ITA set forth in paragraph 9 of the complaint are hereby severed and dismissed with prejudice:

(a) the determination that British Steel Corporation was creditworthy between fiscal years 1971 and 1977 and that consequently

---

[4] See also this Court's recent decision in *British Steel Corporation, et al.* v. *United States, et al.*, 6 CIT —, Slip Op. 83-106, 573 F. Supp. 1145 (October 21, 1983), wherein plaintiffs sought judicial review of final affirmative countervailing duty determinations prior to the publication of the countervailing duty order, this Court held that the action was premature under section 1516a and dismissed the action for lack of jurisdiction.

[5] Except for valuation of the NLF subsidy, plaintiffs mischaracterize their other claims in paragraph 9 of the complaint as challenging merely the "methodology" of calculating subsidies. However, a fair reading of the allegations in paragraph 9 clearly shows plaintiffs' disagreement with ITA's determinations that the government funds and programs in question were not countervailable subsidies. Indeed, plaintiffs distinguish in paragraph 9(b) between the determination that funds provided prior to 1977/78 "were not subsidies" and the determination that the funds found to be subsidies after 1977/78 were undervalued. This distinction is correct since under the countervailing duty law, the issue of whether a subsidy is conferred is distinct from the question of the value or amount of the subsidy.

[6] While defendant disagrees with the severability rule enunciated in *Republic Steel, United States Steel* and *Bethlehem Steel* contending here that plaintiffs are prematurely challenging an indivisible "affirmative determination" respecting stainless steel sheet and strip, defendant concedes that if the above-cited line of cases relied upon by intervenors is correct, this action was filed too late as to the negative determinations challenged in paragraph 9 of the complaint. On that basis, defendant agrees with intervenors that this action must be severed and dismissed with prejudice respecting the claims in paragraph 9 challenging negative determinations.

benefits bestowed upon British Steel Corporation by the United Kingdom during that period were not subsidies;

(b) the determinations that the benefits provided to British Steel Corporation through the United Kingdom's National Loans Fund were not subsidies "during one period";

(c) the determinations that loans from the European Coal and Steel Community to British Steel Corporation were not subsidies; and

(d) the determination that British Steel Corporation did not receive a subsidy from preferential rail rates.

(3) Defendant's alternative motion to suspend that portion of the proceedings in this case relating to stainless steel sheet and strip from the United Kingdom pending resolution of Court No. 83-7-01027 is denied.

BERNARD NEWMAN,
Senior Judge.

(Slip Op. 84-17)

JERNBERG FORGINGS CO., ET AL., PLAINTIFFS, *v.* THE UNITED STATES, DEFENDANT

Court No. 83-12-01790

(Dated: March 8, 1984)

Before RESTANI, *Judge.*

Dow, Lohnes & Albertson (*William Silverman* and *John C. Jost, Esqs.*), for the plaintiff.

Richard K. Willard, Acting Assistant Attorney General, *David M. Cohen,* Director, Commercial Litigation Branch, and *J. Kevin Horgan, Esq.*, for defendant.

Opinion and Order

RESTANI, *Judge:* This matter is before the court on plaintiffs' motion to file out of time a complaint challenging the "negative aspects" of a final affirmative countervailing duty determination made by the Department of Commerce regarding forged undercarriage components from Italy. 48 Fed. Reg. 52,111 (1983).

On December 16, 1983 plaintiffs filed a timely summons in this matter. 28 U.S.C. § 2636(c) (Supp. V 1981) and 19 U.S.C. § 1516a(a)(2) (1982). It appears that plaintiffs mailed their complaint to the court by certified mail on January 16, 1984, but it was returned for insufficient postage. A second attemp to file the complaint on February 7, 1984 was unsuccessful because it was beyond the time specified in 19 U.S.C. § 1516a(a)(2).[1] It also appears that

[1] 19 U.S.C. § 1516a(a)(2)(A) reads in part: "Within thirty days after the date of publication in the Federal Register * * * an interested party * * * may commence an action in the United States Court of International Trade by filing a summons, and within thirty days thereafter a complaint * * *."

copies of plaintiffs' complaint were mailed to all of the parties named in the summons. Plaintiffs' motion to file their complaint out of time was promptly filed on February 10, 1984.

The statutory scheme makes clear that plaintiffs' action is barred if not filed within the relevant statute of limitations. 19 U.S.C. § 1516a(a)(2), 28 U.S.C. § 2636(c). The question presented here is whether the court has discretion to allow plaintiffs' complaint to be filed out of time because a timely summons was filed or whether 19 U.S.C. § 1516a(a)(2)(A) presents an absolute bar to the filing of an untimely complaint.

As stated by defendant "The starting point in every case involving construction of a statute is the language itself," citing *Blue-Chip Stamps* v. *Manor Drug Stores,* 421 U.S. 723, 756 (1975) (concurring opinion). If the language is clear no resort to legislative history is needed, citing *United States.* v. *Oregon,* 366 U.S. 643, 648 (1961). The court does not find the language of 19 U.S.C. § 1516a(a)(2) when read alone to be clear and unambiguous, but the court does find 28 U.S.C. § 2636(c) to be clear. It states:

> A civil action contesting a reviewable determination listed in section 516A of the Tariff Act of 1930 * * * is barred unless commenced in accordance with the rules of the Court of International Trade within thirty days after the date of the publication of such determination in the Federal Register.

When read with 19 U.S.C. § 1516a(a)(2), it is apparent that 28 U.S.C. § 2636(c) specifies the applicable statute of limitations in this case. 19 U.S.C. § 1516a(a)(2)(A) merely sets out procedural details.[2] To the extent that any jurisdictional issue is raised by the timing of the commencement of this action, it is satisfied by the timely filing of the summons. As stated previously, the summons was filed within thirty days of the reviewable determination.

Rule 3(a) of this court is in accord with 28 U.S.C. § 2636(c). It states in part, "the following civil actions are commenced by filing a summons only: * * * An action described in 28 U.S.C. § 1581(c) to contest a determination listed in 516A(a)(2) of the Tariff Act of 1930." A footnote to the rule references the deadline for filing the associated complaint.

Of course a complaint must be timely filed, but failure to file a complaint within the thirty-day period does not bar this action. Under Rule 6(b) of this court, the time for filing a complaint challenging a final determination under § 1516a(a)(2) may be extended even if leave is sought outside the period normally allowed, as long as good cause, which may include excusable neglect, is shown.

The court finds that plaintiffs failed to file their complaint within the thirty day time period because of excusable neglect, that there is a lack of prejudice to other parties and that plaintiffs promptly sought to correct their error.

[2] Neither the legislative history of 19 U.S.C. § 1516a nor that of 28 U.S.C. § 2636(c) is helpful to an understanding of this matter.

For the foregoing reasons, plaintiffs' motion to file their complaint at this time is granted.

Dated: March 8, 1984.

New York, New York.

JANE A. RESTANI,
Judge.

(Slip Op. 84–18)

BRITISH STEEL CORPORATION, ET AL., PLAINTIFFS, *v.* UNITED STATES, ET AL., DEFENDANTS, ALLEGHENY LUDLUM STEEL CORPORATION, ET AL., DEFENDANTS-INTERVENORS

Court No. 83–7–01032

Before BERNARD NEWMAN, *Senior Judge*

On Plaintiffs' Motion for Leave to File a Reply Brief

[Plaintiffs' motion denied.]

(Dated: March 8, 1984)

Steptoe & Johnson Chartered (Richard O. Cunningham, Charlene Barshefsky, and *Alice Mattice, Esqs.)* for plaintiffs.

Richard K. Willard, Acting Assistant Attorney General, *David M. Cohen,* Director, Commercial Litigation Branch and *Sheila N. Ziff, Esq.* for defendants.

Collier, Shannon, Rill & Scott, Esqs. (David A. Hartquist, Paul C. Rosenthal, and *Richard A. Merski, Esqs.)* for defendants-intervenors.

BERNARD NEWMAN, *Senior Judge:* Plaintiffs seek leave to file a reply to intervenors' opposition to plaintiffs' motion made pursuant to Rule 56.1(a) of the Rules of the Court of International Trade for an order directing submission for review upon the agency record.

The pertinent facts may be briefly stated:

On January 4, 1984 plaintiffs submitted their proffered reply brief for filing with the Court although plaintiffs' motion under Rule 56.1(a) was non-dispositive. The Clerk did not accept the reply brief for filing because plaintiffs had not obtained prior leave of the Court, as required by Rule 7(d). Shortly thereafter, on January 12, 1984 this Court granted plaintiffs' motion under Rule 56.1(a), thereby resolving in plaintiffs' favor the very issues to which the proffered reply brief was directed. *See* 7 CIT—, Slip Op. 84–1. Notwithstanding the favorable ruling on their motion under Rule 56.1(a), plaintiffs now move for leave to file a reply to intervenors' opposition stating that the reply "presents important reasons in support of the Court's action, in addition to those stated in its (sic) initial December 9, 1983 motion" (plaintiffs' motion at 2). Neither defendants nor intervenors have responded to plaintiffs' present motion.

Turning to the legal aspects, it should be stressed that Rule 7(d) of the rules of this Court does not permit a moving party to file a

reply brief if its initial motion was non-dispositive, as was the case here, unless otherwise ordered by the Court. Indeed, prior approval by the Court must be obtained even if the opposing parties have no objection. *United States Steel Corporation, et al.* v. *United States, et al.*, 3 CIT 170 (1983).

In view of the implicit requirement of Rule 7(d) concerning prior Court approval, the Clerk's rejection of plaintiffs' proffered reply brief was clearly correct. Moreover, since plaintiffs' initial non-dispositve motion was granted to the full extent requested, and is now moot, it would serve no useful purpose for the Court to grant approval for the filing of a reply brief.

If the Court were to grant plaintiffs' present application to file a reply brief—notwithstanding success in their application under Rule 56.1(a)—would it be amiss to inquire as to whether defendants and intervenors would then seek permission to file a surreply or reopen the entire matter?

For the foregoing reasons, plaintiffs' motion is hereby denied.

BERNARD NEWMAN,
Senior Judge.

(Slip Op. 84-19)

FREEPORT MINERALS COMPANY (FREEPORT-MCMORAN INC.), PLAINTIFF *v.* UNITED STATES, DEFENDANT, CHEVRON STANDARD LIMITED AND CHEVRON CHEMICAL COMPANY, INTERVENORS

Court No. 83-10-01498

Before BOE, *Judge.*

Memorandum Opinion and Order of Dismissal

[Motions of defendant and intervenors to dismiss—granted]

(Dated: March 9, 1984)

Covington & Burling (*Harvey M. Applebaum* and *Richard E. Neff*, on the brief) for the plaintiff.

Richard K. Willard, Acting Assistant Attorney General (*David M. Cohen*, Director Commercial Litigation Branch and *Sheila N. Ziff*, on the brief) for the defendant.

Donohue and Donohue (*Joseph F. Donohue, John M. Peterson*, and *George W. Thompson*, on the brief) for the intervenors.

BOE, *Judge*: In the above entitled action, the plaintiff seeks to challenge the review determination made pursuant to 19 U.S.C. § 1675 by the Department of Commerce, International Trade Administration ("ITA") revoking the antidumping finding on elemental sulphur from Canada manufactured and exported by Chevron Standard Ltd., ("Chevron") and imported by Chevron Chemical Co., intervenors herein.

To the action instituted by the plaintiff, the defendant and the intervenors have filed motions to dismiss on the grounds that this court lacks jurisdiction over the subject matter, that the complaint of the plaintiff fails to state a claim upon which relief can be granted, and that the plaintiff is guilty of laches.

The following facts are deemed necessary to a consideration of the defendant's and intervenors' motion to dismiss.

In 1973, the Department of Treasury made a finding of dumping against Chevron and other Canadian producers of sulphur for export to the United States. *Elemental Sulphur from Canada,* 38 Fed. Reg. 34655 (1973).

The ITA conducted an administrative review of the 1973 dumping finding as required by 19 U.S.C. § 1675. In the preliminary results of its review determination, the ITA found that Chevron and certain other exporters of suphur from Canada had made no sales of sulphur at less than fair value from January 1, 1976 to February 8, 1979 and indicated its intention to revoke the 1973 dumping finding for the unliquidated entries of Chevron entered after February 8, 1979. *Elemental Sulphur from Canada, Preliminary Results of Administrative Review of Antidumping Finding and Tentative Determination to Revoke in Part,* 46 Fed. Reg. 21214 (April 9, 1981).

On July 23, 1982, the ITA published a Notice of the Final Results of Administrative Review of Antidumping Finding relating to Chevron. In this notice, the ITA again determined that all sales were made at not less than fair value from May 1, 1977 to February 8, 1979.[1] However, the ITA postponed action on the application for revocation filed by Chevron for a reason unrelated to its determination: namely, that Chevron was a "significant shareholder member" in a Canadian corporation, Cansulex, Ltd., from which the ITA had failed to secure certain requested information in a matter having no relation to the intervenors. *Elemental Sulphur from Canada; Final Results of Administrative Review of Antidumping Finding.* 47 Fed. Reg. 31911 (July 23, 1982).

On August 20, 1982, the intervenors commenced an action in this court challenging the ITA's final determination of July 23, 1982. *Chevron Standard, Ltd.* v. *United States,* 5 CIT —, Slip Op. 83-39 (May 3, 1983). This court remanded the proceedings to the ITA with the following directions:

> Accordingly, the within proceedings are remanded to the ITA for reconsideration of the final results of the adminstrative review conducted by it insofar as it relates to the plaintiffs and, *absent consideration of the conduct on the part of Cansulex, make a determination in the final results of its administrative review in accordance with the facts ascertained from its investigation of the dumping findings previously made relating to sales at not less than fair value by the plaintiffs.*

[1] The Treasury Department had previously determined that all sales had been made at not less than fair value for the period of January 1, 1976 through April 30, 1977.

> The determination made by ITA in its reconsideration shall be submitted to this court within a period of thirty (30) days from and after the date of entry of the within Order. *Id.* (emphasis added).

Pursuant to the order of remand of this court, the ITA on June 1, 1983 submitted its remand determination that a revocation of the finding of dumping should be issued with respect to Chevron. On June 10, 1983, this court entered an order affirming the remand determination made by the ITA. In addition to confirming the ITA's determination to revoke the antidumping duty order against Chevron, this court affirmed the findings of the administering authority that:

> (1) There have been no Chevron sales at less than fair value from the date of withholding, April 1, 1973, through the date of the last period of Departmental examination, February 8, 1979,
> (2) the appropriate representations have been filed with the Department as required by 19 CFR 353.54, and
> (3) the Department is aware of no other circumstances in respect to Chevron which might prompt the Department not to invoke its revocation discretion at this time

Chevron Standard Ltd. v. *United States,* 5 CIT —, Slip Op. 83-55 (June 10, 1983).

Pursuant to the foregoing order of this court, the ITA published in the Federal Register a notice of partial revocation of the antidumping finding with regard to elemental sulphur produced and exported by Chevron. *Elemental Sulphur from Canada; Partial Revocation of Antidumping Finding,* 48 Fed. Reg. 40760 (September 9, 1983).

The plaintiff seeks to invoke the jurisdiction of this court in the instant action by contending that this notice of revocation is a "final determination" made under the authority of 19 U.S.C. § 1675 and, accordingly, is a reviewable determination pursuant to 19 U.S.C. § 1516a(a)(2).

The statutory authority, relied upon by the plaintiff, precludes the acceptance of this contention.

The provisions relating to the exclusive judicial review of administrative antidumping proceedings and the time for the commencement of a challenge thereto in this court are set forth with particularity in the Trade Agreements Act of 1979, 19 U.S.C. § 1516a(a)(2)(A)&(B). Subsecton (A) specifies the time for commencement of an action for review of a "determination" and an "antidumping duty order" in this court:

> (A) *In general*
>
> Within thirty days after date of publication in the Federal Register of—
>
> (i) notice of any determination described in clause (ii), (iii), (iv), or (v) of subparagraph (B), or

> (ii) an antidumping or countervailing duty order based upon any determination described in clause (i) of subparagraph (B),
>
> an interested party who is a party to the proceeding in connection with which the matter arises may commence an action in the United States Court of International Trade by filing a summons, and within thirty days thereafter a complaint, each with the content and in the form, manner, and style prescribed by the rules of that court, contesting any factual findings or legal conclusions upon which the determination is based.

Subparagraph (B) enumerates with specificity the determinations which may be challenged in this court under subparagraph (A):

> (B) *Reviewable determinations*
>
> The determinations which may be contested under subparagraph (A) are as follows:
>
> (i) Final affirmative determinations by the Secretary and by the Commission under section 1303 of this title, or by the administering authority and by the Commission under section 1671d or 1673d of this title.
>
> (ii) A final negative determination by the Secretary, the administering authority, or the Commission under section 1303, 1671d, or 1673d of this title.
>
> (iii) A determination, other than a determination reviewable under paragraph (1), by the Secretary, the administering authority, or the Commission under section 1675 of this title.
>
> (iv) A determination by the administering authority, under section 1671c or 1673c of this title, to suspend an antidumping duty or countervailing duty investigation.
>
> (v) An injurious effect determination by the Commission under section 1671c(h) or 1673c(h) of this title.

Congress in providing for the commencement of a review proceeding in this court in the aforequoted statutes distinguishes between a "determination" made by the ITA or International Trade Commission ("ITC") (subparagraph (A)(i)) and an "antidumping duty order" based upon final affirmative determinations (subparagraph (A)(ii)) made by the ITA and ITC. The foregoing statutes are patently clear that it is only with respect to an *antidumping duty order,* based on final affirmative determinations by the ITA and ITC under 19 U.S.C. § 1673(d), that the time for the commencement of an action by this court begins to run from the date of the publication of such order in the Federal Register. 19 U.S.C. § 1516a(a)(2)(A)(ii) and (B)(i).

In the instant action the Notice of Partial Revocation under which the plaintiff seeks to gain statutory sanctuary is *not* an "Order" based on an affirmative determination made by the ITA pursuant to 19 U.S.C. § 1671(d) or § 1673(d). The administrative review conducted by the ITA was a proceeding mandated by 19

U.S.C. § 1675. Accordingly, the determination made by the ITA in its review proceeding was a determination subject to challenge pursuant to the provisions of § 1516a(a)(2)(B)(iii) and required thereby to be commenced in this court within 30 days after the publication of the notice of such determination in the Federal Register on July 23, 1982.

The plaintiff cannot now be heard belatedly to complain that it has not been afforded the opportunity to contest the revocation of the antidumping finding on the merits. The preliminary results of the administrative review by ITA and its tentative determination of revocation of the antidumping finding as it related to Chevron and other companies were published in the Federal Register on April 9, 1981. 46 Fed. Reg. 21214. The ITA provided interested parties, including the plaintiff, with the opportunity to submit written and oral comments. The notice of the final results of the review determination specifically sets forth the comments of the plaintiff during the investigation as well as the position of ITA with respect thereto. 47 Fed. Reg. 31911 (1982).

In instituting its challenge to the final results of the review determination made by the ITA on July 23, 1982, the intervenors served a copy of the summons filed in this court on all interested parties to the administrative proceeding, including the plaintiff. Plaintiff made no effort as an interested party to intervene in the action commenced by the intervenors nor did the plaintiff seek to institute an independent action challenging any findings in the review determination of the ITA. Notwithstanding the fact that the ITA postponed action on Chevron's application for revocation because of unrelated reasons, the findings of the ITA in its review determination made pursuant to 19 U.S.C. § 1675, as they related to sales at not less than fair value and the revocation of the antidumping finding of 1973, were subject to challenge within 30 days after the publication of the notice thereof in the Federal Register.

Plaintiff contends that this court in its order affirming the remand determination by the ITA did not reach the merits of the ITA final review determination. As hereinbefore quoted in pertinent part, the order of remand by this court directed the ITA to make a determination in the final results of its administrative review consistent with the facts ascertained from its dumping investigation and relating to sales at not less than fair value. *Supra* at 3. The court confirmed the ITA determination on remand revoking the antidumping duty order. In the absence of patent irregularities in the administrative proceedings or a timely challenge directed to the merits of the antidumping revocation by an interested party, it would be an unwarranted intrusion for the court to disturb the findings of the ITA in its remand determination. No motion for rehearing or to vacate the order of this court was made by an interested party to the administrative proceedings, including

the plaintiff, within the time provided by statute and/or the rules of this court.

The order of this court in Slip Op. 83-55 (June 10, 1983) affirming the remand determination of the ITA is *res judicata.* Plaintiff's attempt to initiate a new cause of action in this court with respect to subject matter, concerning which this court's order in a prior cause of action has become final, constitutes a collateral attack. The United States Court of Appeals for the Seventh Circuit has stated in the case of *Lambert* v. *Conrad,* 536 F.2d 1183, 1185 (7th Cir. 1976):

> This same result is reached even though the parties did not actually litigate the issue in the prior action because res judicata applies not only to matters actually litigated but also to matters which might have been presented to sustain or defeat the right asserted in the earlier proceeding.

See also 13 C. Wright and A. Miller, *Federal Practice and Procedure,* § 3536 at 333 (1975).

By reason of the for court concludes:

(1) that the instant action by which plaintiff now seeks to challenge the determination of the ITA revoking the antidumping finding of 1973 as it relates to Chevron is untimely and that, accordingly, this court is without jurisdiction to entertain plaintiff's action, and

(2) that the plaintiff as an interested party in the administrative proceedings failed to intervene in the cause of action *Chevron Standard Ltd.* v. *United States* or to institute an independent action challenging the determination of the ITA under date of July 23, 1982, and

(3) that the plaintiff is now precluded from collaterally attacking the order of this court under date of June 10, 1983 affirming the remand determination of the ITA.

Now therefore, it is hereby

Ordered that the above entitled action be and is hereby dismissed with prejudice.

By the Court,

NILS A. BOE,
Judge.

(Slip Op. 84-20)

YAMAHA INTERNATIONAL CORP., PLAINTIFF *v.* UNITED STATES DEFENDANT

Court No. 80-6-00908

Before LANDIS, *Senior Judge.*

Electronic Musical Instruments—Parts

The District Director for the Port of Los Angeles classified the merchandise in issue, imported from Japan, as electronic musical instruments, other, pursuant to TSUS item 725.47. The imported merchandise consists of all necessary components incorporated into subassemblies necessary to produce sound as an electronic organ. After importation these electronic subassemblies are mounted in the United States to a cabinet.

Held: The evidence of record clearly indicates that the imported merchandise is the core of an electronic organ. The cabinet addition adds only to the refinement of the sound acting as a baffle and to the marketability of the product to the public. The purpose of the merchandise, to produce sound through electronic impulses, is capable of production without the benefit of a cabinet. Customs classification pursuant to TSUS item 725.47 is sustained.

Unfinished Articles

This Court and the United States Court of Customs and Patent Appeals (presently known as the United States Court for the Federal Circuit) have definitively held that parts of an unfinished article are classifiable as the article itself not as parts of the unfinished article where in its imported condition it is a substantially complete article of the intended nature. *Daisy-Heddon, Div. Victor Comptometer Corp.* v. *The United States,* 66 CCPA 97, C.A.D. 1228, 600 F.2d 799 (1979); *General Electric Company* v. *United States,* 2 CIT 84, 525 F. Supp. 1244 (1981), aff'd., 69 CCPA—, 681 F.2d 785 (1982). It is clear that these cases have resolved and clarified the competing tariff provisions for unfinished articles (General Interpretive Rule 10(h)) and the various TSUS items pertaining to parts by holding that a substantitally complete article is classifiable as an unfinished article despite the omission of an essential part.

[Judgment for defendant.]

(Decided: March 9, 1984)

Glad & White (Edward N. Glad at the trial and on the briefs) for the plaintiff.
Richard K. Willard, Acting Assistant Attorney General; *Joseph I. Liebman,* Attorney in Charge, International Trade Field Office, Commercial Litigation Branch (*Susan Handler-Manahem* at the trial and on the brief), for the defendant.

LANDIS, *Senior Judge:* This case was tried before me in Los Angeles, California. The District Director for the Port of Los Angeles classified merchandise imported from Japan pursuant to TSUS item 725.47 as an electronic musical instrument and imposed a duty at the rate of 17% *ad valorem.* The District Director considered the merchandise as an unfinished electronic organ. Plaintiff argues that the merchandise in issue consists of various parts of an electronic musical instrument as in its imported form it lacked a cabinet and a bench.

The applicable TSUS items are: General Interpretive Rules

* * * * * * *

10(h) Unless the context requires otherwise, a tariff description for an article covers such article, whether assembled or not assembled, and whether finished or not finished.

10(ij) a provision for 'parts' of an article covers a product solely or chiefly used as a part of such article, but does not prevail over a specific provision for such part.

Classified:

Electronic musical instruments:

Item 725.47	Other.....	17% ad valorem

Claimed:

* * * * * * *

* * * inductors; all the foregoing which are electrical goods, and parts thereof:

* * * * * * *

Item 682.60	Other.....	7.5% ad valorem

* * * * * * *

Item 684.70	Microphones; loudspeakers; head phones; audio frequency electric amplifiers; electric sound amplifier sets comprised of the foregoing components; and parts of the foregoing articles (including microphone stands).	7.5% ad valorem

* * * * * * *

Item 726.90	Musical instrument parts not specially provided for.	8.5% ad valorem

The issues presented are whether the various imported components constituted an unfinished muscial instrument or are merely individual parts thereof and, whether plaintiff has sustained its dual burden of proof.

At the trial plaintiff called four witnesses and introduced sixteen exhibits. Defendant called one witness and introduced one exhibit.

Plaintiff's first witness was Mr. Yoshi Kobayshi, import manager of Yamaha International Corporation (YIC) for twenty two years. The record indicates that his duties included classifying all shipments entering this country according to TSUS for subsequent clearance through customs (R.6). The witness testified that he currently brings in various components that are not assessed as unfinished organs such as amplifiers, power supply units, and loudspeakers all of which are assessed under various TSUS items (R.17). In response to counsel for plaintiff's question about the classification of the remaining components for these electronic organs he replied that they would be classified under other parts for the organ pursuant to TSUS 726.90. On cross-examination Mr. Kobayshi testified that the classification of the individual parts (R.17) represented an entirely different situation from the merchandise before the court at this trial (R.18).

Plaintiff's second witness was Mr. William I. Perkins who testified that he was Director of Product Assurance for the Yamaha Corporation. He testified that he has been with the company for thirteen years and that his former position was National Service Manager, Electronic Organ Products (R.20). The testimony indicates that Mr. Perkins has a long history (dating back to approximately 1948) of dealing in electronic components especially related to electronic organs (R.22). Mr. Perkins testified extensively as to the various components that are included in an electronic organ (R.14–35) resulting in Exhibits 4 through 11 inclusive being received in evidence. Mr. Perkins testified that the rack assembly consists of components assembled to the extent that only five (5) percent of all components are capable of being plugged in and that the remainder of the rack assembly has to be hand soldered (R.42). The witness further testified that time studies (efficiency reports) are performed by Yamaha after the production run ends and thereafter shredded. The witness testified that the front part of the organ cabinet acts as a baffle which is necessary to the operation of an electronic organ (R.51). He further stated that it takes eight people working four and one half hours to assemble all of the components into the cabinet. The witness also testified that the organ bench provides the proper height that a performer would expect as organ players have to use their legs to play the pedal keyboard (R.56). The witness also testified that as he knows the term "unfinished" in the industry it refers to an organ in a case that has not had oil or lacquer applied (R.58).

On cross-examination Mr. Perkins testified that a speaker would make noise without a baffle. He further testified on cross-examination that it does not take four and one half hours of work time for each of the eight people to assemble the basic electronic components to the cabinet (R.68, ref. to R.53). The witness also testified that music could be produced on a D–80 model organ and an A–60 model organ even though there was no bench (R.69–70). The wit-

ness could not, by self-admission, testify with accuracy as to the total number of parts contained in the various subassemblies of the imported merchandise (R.73, 74).

Plaintiff's third witness was Mr. Jack Flon who testified that he has been an employee of YIC for eighteen years and is currently Director of Marketing, Keyboard Division for YIC. Mr. Flon testified that he became National Sales Manager for YIC in 1973 and, in holding that position, he was responsible for the sales of organs and pianos throughout the United States (R. 79). As Director of Marketing he testified that he meets with advertising agencies and cabinet designers. Mr. Flon further testified as to his understanding of the term unfinished electronic organs stating that in the trade an unfinished organ denotes an organ is in its white form which means that it has not been stained (R. 87). On cross-examination the witness testified that he obtained his knowledge of the term unfinished organ through his many contacts in the industry over a period of many years (R. 89).

Plaintiff's final witness was Mr. David Lu, the Corporate Accounting Manager for YIC since 1977. Previously, he was the Cost Accountant for YIC. Mr. Lu's testimony was to serve as the foundation for the introduction of Exhibits 20 and 21 which were cost sheets. However, Mr. Lu testified that the costs and burden of labor are standardized for each year and will not change for the fiscal year. The witness testified that the standard costs are derived from an engineering study and not from the cost of actual production (R. 100, 101). The exhibits were held inadmissible by the court and counsel for plaintiff made an offer of proof as to the cost of U.S. materials and burden of labor contained in Exhibits 20 and 21 (R. 108).

Defendant's sole witness was Mr. David A. Bunger, Vice President of Engineering for the Baldwin Piano and Organ Company. Mr. Bunger had been employed for twenty three years by the Baldwin Company. He is responsible for all of the research, design and development for Baldwin electronic organs and is also responsible for the Technical Service Department for the Baldwin Company. Mr. Bunger is a member of the Audio Engineering Society and the American Management Association. The witness testified that he holds over twenty five patents mostly related to electronic circuit design (R. 111). Mr. Bunger testified that he would not consider a loudspeaker a subassembly of the electronic organ but rather, he denominated it as a component thereof. The witness testified that the cabinet allows an electronic organ to be put in saleable form. He further stated that the cabinet acts as a baffle which will allow a better performance of the speaker. Mr. Bunger testified that the speaker makes recognizable music without the aid of the cabinet (R. 118). The witness also testified that the added cost due to ornate cabinet styling would have no effect on the quality of the organ's music production (R. 119). He further testified that if one had all of

the working components of an electronic organ but *did not have a cabinet,* these components and subassemblies could be connected in a way that would result in the creation of music (R. 120, 121).[1]

The witness also testified that as a ratio, it typically takes between three or four to one the amount of time to assemble the components and subassemblies as it does to mount these electronic components and subassemblies into the cabinet.

This Court and the United States Court of Customs and Patent Appeals (presently known as the United States Court for the Federal Circuit) have definitively held that parts of an unfinished article are classifiable as the article itself and not as parts of the unfinished article where in its imported condition it is a substantially complete article of the intended nature. *Daisy-Heddon, Div. Victor Comptometer Corp.* v. *The United States,* 66 CCPA 97, C.A.D. 1228, 600 F.2d 799 (1979); *General Electric Company* v. *United States,* 2 CIT 84, 525 F. Supp. 1244 (1981), aff'd., 69 CCPA —, 681 F.2d 785 (1982). It is clear that these cases have resolved and clarified the competing tariff provisions for unfinished articles (General Interpretive Rule 10(h)) and the various TSUS items pertaining to parts by holding that a substantially complete article is classifiable as an unfinished article despite the omission of an essential part. In *Daisy-Heddon, supra,* the CCPA stated:

> In reading the majority opinion in *Authentic Furniture,* it must be emphasized that the court approved the test applied by the Customs Court and was not attempting to formulate another test or modify the test applied by the Customs Court. [4] However, the language of the majority opinion indicates that a different formulation of the test was in fact adopted. It has since caused some confusion, and, if improperly read, could result in decisions which are at odds with what we perceive to be the intent of Congress as expressed in general interpretative headnote 10(h). To the extent that the majority opinion in *Authentic Furniture* may be so read as providing a test other than the test used in that case by the Customs Court, it is expressly overruled for the reasons set forth below. (At 101, 102).

That court then specifically reasoned:

> [5] If, as appellant argues, the omission of a part essential to the use of the eo nomine designated article would prevent classification as the article in an unfinished condition, there would

[1] The following is the pertinent testimony:

Q. Mr. Bunger, if you had all of the working components of an electronic organ but did not have a cabinet, could these components be attached to create music?

A. Yes.

Q. How could that be done?

A. Very simply by making all of the necessary connections of various subassemblies, except that you would not normally have them in their normal playing position. They could sit out on a table top, for example.

Q. And you could still create music from these components?

A. Yes. In fact, this is a normal way, in engineering, that you may work on new features for organs or a new organ system design. Prior to having any cabinet, you are designing the electronics that is going to be producing these various features in the music.

Now, typically, if you have these components sitting on a bench, you may have some speaker cabinet that you would be playing the music through. That is not necessary. You could have a speaker laying on the bench. You could recognize it as music but would not be able to judge its true value.

be, in practical effect, no such thing as an unfinished article, since the omission of virtually any part from an otherwise complete article would prevent its use in the manner intended. See *Authentic Furniture Products,* 61 CCPA at 8, 486 F.2d at 1064–65 (Miller, J., dissenting). Such is clearly not the intent of Congress, as evidenced by the very existence of General Interpretative Rule 10(h).

To assist in determining whether an article is substantially complete the CCPA in *Daisy-Heddon,* id., set forth five factors (although not exhaustive) for consideration. These relevant factors include:

> * * * The following factors can be relevant: (1) Comparison of the number of omitted parts with the number of included parts; (2) comparison of the time and effort required to complete the article with the time and effort required to place it in its imported condition; (3) comparison of the cost of the included parts with that of the omitted parts; (4) the significance of the omitted parts to the overall functioning of the completed article; and, (5) trade customs, i.e., does the trade recognize the importation as an unfinished article or as merely a part of that article. This list of factors is not exhaustive; it must be recognized that fewer than all of the above factors, or additional factors, may come into play depending on the particular importation * * *

In view of this discussion plaintiff's reliance upon *Montgomery Ward & Co.* v. *The United States,* 61 CCPA 101, C.A.D. 1131, 499 F. 2d 1283 (1974) is unjustified, and the court will now review the evidence of record against the backdrop of the guidelines enunciated in *Daisy-Heddon.*

Initially, the court will discuss plaintiff's attempted inclusion of the organ bench during the trial. While the court did permit testimony relative to a bench to be introduced into evidence it did not by implication grant an amendment of the complaint. The bench was not pleaded in the complaint nor was there a formal motion whether written or oral to amend the complaint. A party is generally bound by its pleadings. *Ataka America, Inc.* v. *United States,* 80 Cust. Ct. 132, C.D. 4745 (1978). Matters not covered by the pleadings but discussed in the brief, are generally not properly before the court. *Border Brokerage Co.* v. *United States,* 83 Cust. Ct. 97, C.D. 4825, 484 F. Supp. 901 (1979), aff'd. 68 CCPA 32, C.A.D. 1254, 646 F. 2d 539 (1981).

In any event the organ bench is not essential to produce music from the organ. The testimony of plaintiff's witness, Mr. Perkins, on cross-examination indicates a bench is not essential to producing music from the organ and that a chair or stool of the proper height would enable the player to produce music (R. 70). Defendant's witness, Mr. Bunger, testified on cross-examination that a

bench is not necessary to play the organ in issue (R. 134), but that to fully operate the organ a bench would be desirable (R. 135).

The bench has no part in the production of electronic sound. Indeed, it is not physically attached nor is it an integrated component or even a part of the organ unit. *United States* v. *Willoughby Camera Stores, Inc.*, 21 CCPA 323, T.D. 46851 (1933), cert. den. 292 U.S. 640 (1933). See also, *United States* v. *American Steel and Copper Plate Co.*, 14 Ct. Cust. Appls. 139, T.D. 41673 (1926), where the court held that no article can be held to be a part of another article if it is not essential to the use of the other.

In evaluating the evidence in light of the first test under *Daisy-Heddon, supra,* it is clear that the exhibits speak for themselves. The only part added after importation was a cabinet. The essence of an electronic instrument is the electronic development of sound. Indeed, TSUS is clear on this point. Schedule 7, Part 3, Subpart A, Headnote 2(c) states:

> (c) the term *'electronic musical instruments'* embraces all musical instruments in which the sound is generated electrically, and conventional-type instruments not suitable for playing without electrical amplification, but the term does not include conventional-type instruments, fitted with electrical pick-up and amplifying devices, when the instrument is suitable for playing without such amplification.

The complexity and basic number of components incorporated into the various subassemblies far overweigh the number of the singular additional standard part, the cabinet.

Plaintiff has also failed to demonstrate that the time and effort in placing the article in its final condition approaches the time and effort involved in the manufacturing of the imported article. Plaintiff, who bears the burden of proof, did not submit specific monetary figures addressing this issue. Plaintiff introduced evidence only to the effect that it required eight men an average of four and one half hours to complete the cabinet assemblage (R. 53). However, all the man were not working at the same time, therefore, the total man-hours would reflect a figure less than thirty six hours required for assemblage (R. 68).

The third test included under the *Daisy-Heddon* guidelines is a comparison between the cost of included parts and omitted parts. Here, the entire electronic system that enables the generation of sound, the electronic subassemblies and the numerous components thereof, should be compared with the cost of the organ housing. Plaintiff, however, fails to affirmatively show cost data. Mr. David Lu, plaintiff's accounting manager and former cost accountant testified that the costs and burden of labor are standardized for an annual fiscal period and that such costs are not the actual cost of production, but rather are derived from an engineering study (R. 100, 101). Based upon this testimony the court, at trial, denied the admission of two exhibits relating to production costs.

The fourth guideline enunciated under *Daisy-Heddon* is the significance of the omitted parts as opposed to the overall functioning of the completed article. For marketing purposes the electronic organs in issue must have a cabinet. However, it must be reiterated that it is the electronic components that create the sound and, therefore, are the basic essence of the electronic organ. Congress was distinct in its classification of electronic instruments. It is the electronic components that cause the resultant sound. The cabinets or any other housing for the refinement of sound are not at issue. It is the basic creation of the sound electronically that the statute addresses (Schedule 7, Part 3, Subpart A, Headnote 2(c) *supra*. Defendant's witness, Mr. Bunger, specifically testified that the speaker will make recognizable music without a cabinet (R. 118). Mr. Bunger further testified that in the "normal way" an engineer would place the electronic subassemblies on table tops and that speakers could be placed on benches rather than in cabinets (R. 121). In response to the question whether the electronic components of the organ without the cabinet would constitute a substantially complete functioning organ, the answer was in the affirmative (R. 124). Mr. Bunger further testified on recross-examination that he has known of an organist who can play the organ without benefit of a bench (R. 150). Mr. Bunger's testimony appeared to be well-founded and more reliable than plaintiff's witnesses Kobayshi or Perkins.

The final test set forth by the CCPA in the *Daisy-Heddon* decision is whether the trade recognizes the importation as an unfinished article or as merely a part of that article. Addressing this issue plaintiff's witnesses, Perkins and Flon, testified that an unfinished organ is one that is housed in a cabinet that has not been stained, oiled or lacquered (R. 58, 87). Defendant's witness, Bunger, testified that if all of the components of an electronic organ were present but did not have a cabinet in which to be stored he would consider it a substantially complete, functioning organ (R. 124). When asked whether the electronic organ trade would otherwise consider the imported product a substantially complete, functioning organ the witness responded that he did not know what they would consider a substantially complete, functioning organ (R. 124). It appears that plaintiff's submission of proof on this issue is geared toward the sales and marketing phase while defendant's touches entirely upon the technical theory of an unfinished electronic organ. Once again it must be emphasized that it is the combination of the electronic components and subassemblies that accomplish the basic purpose of the imported merchandise, namely, to produce music through electronic impulses. Since it is a question of an unfinished electronic instrument versus components thereof in addition to the fact that the imported merchandise was sold as individual sets, it appears that Mr. Bunger's testimony should be afforded greater weight than that of Messrs. Perkins and Flon.

Plaintiff has failed to meet its dual burden of proving the Customs Service classification is in error and its own claimed classification is correct. *United States* v. *New York Merchandise,* 58 CCPA 53, C.A.D. 1004, 435 F.2d 1315 (1970); *Hawaiian Motor Company* v. *United States,* 82 Cust Ct. 70, C.D. 4790, 473 F. Supp. 787 (1979), aff'd., 67 CCPA 42, C.A.D. 1241, 617 F.2d 286 (1980); *Merry Mary Fabrics, Inc.* v. *United States,* 1 CIT 13 (1980). The record clearly indicates that there is substantial and weighty evidence to sustain the District Director's determination. Further, the merchandise was imported as a complete set for use as an electronic organ. There is no evidence that any further electrical components were necessary for the production of music. The merchandise is essentially an integrated unit.

Accordingly the classification of the District Director of Customs at the port of Los Angeles is sustained and the complaint is, in all respects, dismissed.

FREDERICK LANDIS,
Senior Judge.

JUDGMENT

YAMAHA INTERNATIONAL CORP., PLAINTIFF, *v.* UNITED STATES, DEFENDANT

Court No. 80-6-00908

Landis, *Senior Judge.*

This case having been duly submitted for decision and the Court, after due deliberation, having rendered a decision herein; now, in conformity with said decision,

It is hereby ordered, adjudged, and decreed: that the classification of the District Director for the port of Los Angeles as other electronic musical instruments pursuant to TSUS item 725.47 is hereby affirmed, and the complaint of plaintiff is, in all respects, dismissed.

Dated at New York, N.Y., March 9, 1984.

FREDERICK LANDIS,
Senior Judge.

(Slip Op. 84-21)

AMERICAN ASSOCIATION OF EXPORTERS AND IMPORTERS—TEXTILE AND APPAREL GROUP, PLAINTIFF, *v.* UNITED STATES, ET AL., DEFENDANTS, AND AMERICAN FIBER TEXTILE APPAREL COALITION, DEFENDANT-INTERVENOR

Court No. 82-11-01581

Before: CARMAN, *Judge.*

Memorandum Opinion and Order

[Defendants' motion to dismiss granted.]

(March 14, 1984)

Daniels, Houlihan & Palmeter (*Michael Daniels and Martin Lewin* on the motion) for the plaintiff.

Richard K. Willard, Acting Assistant Attorney General; *David M. Cohen,* Director, Commercial Litigation Branch, Civil Division (*Velta A. Melnbrencis* on the motion); (*Pamela Breed,* Deputy Assistant General Counsel, Enforcement and Litigation, Department of Commerce; *Mary Beth West,* Attorney-Adviser, Office of the Assistant Legal Adviser for Business Economics, Department of State, of counsel on the memoranda) for the defendants.

Leva, Hawes, Symington, Martin & Oppenheimer (*Donald Harrison, Simeon M. Kriesberg,* and *Bruce G. Joseph* on the motion); *Verner, Lipfert, Bernhard & McPherson* (*Alan Wm. Wolf, John D. Greenwald,* and *Ann K. H. Simon* on the motion) for the defendant-intervenor.

Carman, Judge: The plaintiff in this action, a trade association representing domestic importers and retailers of textile and apparel products, has raised numerous claims relative to United States international trade policies and the authority of the President in carrying out those policies. The Association claims that its members have been seriously aggrieved by recent import restraints, or quotas, imposed by the Executive Branch of the United States Government. This suit was commenced to obtain declaratory and injunctive relief with respect to the Government's actions. The case is before the court on defendants' motion to dismiss for lack of subject matter jurisdiction, failure to exhaust administrative remedies, lack of standing, and failure to state a claim as to which relief may be granted.

BACKGROUND

The Constitution vests in the Congress the power to regulate commerce between the United States and foreign nations. U.S. Const. art. I, § 8, cls. 1, 3. Congress, subject to certain constitutional restrictions, may delegate this power to the Chief Executive or to an administrative agency, *see California Bankers Association* v. *Schultz,* 416 U.S. 21, 59 (1974), and indeed has done so on numerous occasions, *see, e.g.,* Trade Expansion Act of 1962, Pub. L. No. 87-794, § 232(b), 76 Stat. 872, 877 (current version at 19 U.S.C. § 1862(b) (1982)). The authorization for congressional delegation has long been recognized as inherent in our constitutional scheme, for it "enable[s] [Congress] to perform its function in laying down policies and establishing standards, while leaving to selected instrumentalities the making of subordinate rules within prescribed limits and the determination of facts to which the policy as declared by the legislature is to apply." *Panama Refining Co.* v. *Ryan,* 293 U.S. 388, 421 (1935).

The importation of foreign-made merchandise into the commerce of the United States is, of course, particularly well suited for regu-

lation by the Executive under a delegation from Congress. The Agricultural Act of 1956, ch. 327, § 204, 70 Stat. 188, 200 (codified as amended at 7 U.S.C. § 1854 (1982)) (the Act), represents such a delegation and is at the center of the controversy presently before the court. Section 204 of the Act, as amended, provides:

> The President may, whenever he determines such action appropriate, negotiate with representatives of foreign governments in an effort to obtain agreements limiting the export from such countries and the importation into the United States of any agricultural commodity or product manufactured therefrom or textiles or textile products, and the President is authorized to issue regulations governing the entry or withdrawal from warehouse of any such commodity, product, textiles, or textile products to carry out any such agreement. In addition, if a multilateral agreement has been or shall be concluded under the authority of this section among countries accounting for a significant part of world trade in the articles with respect to which the agreement was concluded, the President may also issue, in order to carry out such an agreement, regulations governing the entry or withdrawal from warehouse of the same articles which are the products of countries not parties to the agreement. Nothing herein shall affect the authority provided under section 624 of this title.

7 U.S.C. § 1854 (1982). The provision authorizes the President to negotiate with foreign governments for the purpose of limiting textile imports. This authority has been exercised by the President through a network of high-level executive bodies that have the responsibility to advise and inform the President regarding textile industry conditions.

Chief among these advisory bodies is the Committee for the Implementation of Textile Agreements (CITA, the Committee), established to supervise the implementation of textile agreements reached pursuant to section 204.[1]

The Multifiber Arrangement, or MFA

Among the textile trade agreements germane to these proceedings is the Arrangement Regarding International Trade in Textiles (Multifiber Arrangement, MFA), *done* December 20, 1973, 25 U.S.T. 1001, T.I.A.S. No. 7840 (entered into force January 1, 1974, April 1, 1974). The principal aim of the treaty is to foster greater international cooperation in textile trading. *Id.* art. 1, ¶ 2. Toward this end, article 3 of the MFA contains a consultative mechanism in the event a participating country determines that quantitative restrictions on textile imports may be warranted. Such restrictions, or quotas, properly may be invoked only if justified under provisions of the General Agreement on Tariffs and Trade (GATT), or pursu-

[1] The Committee for the Implementation of Textile Agreements (CITA) consists of representatives from the State, Treasury, Commerce and Labor Departments. The United States Trade Representative, or his designee, also serves on the CITA as a nonvoting member. *See* Exec. Order No. 11,651, 37 Fed. Reg. 4699 (1972).

ant to the market disruption standard in Annex A to the MFA.[2] The MFA was negotiated pursuant to the grant of authority contained in section 204 of the 1956 Act.

The Bilateral Textile Agreements

Article 8 of the MFA embodies a pledge that measures will be taken to prevent nonparticipating countries from frustrating the goals of the MFA. In compliance, and pursuant to section 204 of the Act, the United States has entered into a series of bilateral agreements with MFA and non-MFA countries,[3] including the Agreement Relating to Trade in Cotton, Wool and Manmade Fiber Textiles and Textile Products, Sept. 17, 1980, United States-People's Republic of China, 32 U.S.T. 2071, T.I.A.S. No. 9820 (entered into force January 1, 1980). This bilateral agreement is fact-specific since it sets out categories of apparel with corresponding quantitative limits. *Id.* Annex B. Paragraph 8 of the treaty, though, applies to categories not specifically covered by the restraint levels of Annex B. This paragraph contains a consultation mechanism that is tied to the "market disruption" standard of the MFA. *See supra* note 2.

The Contested CITA Restraint Actions

The bilateral agreement between the United States and China lapsed on December 31, 1982, despite concerted efforts aimed at its continuance.[4] The United States (through the Committee), desirous of stemming the burgeoning Chinese textile tide, announced new quantitative restraint levels pursuant to the authority of section

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[2] Annex A to the Arrangement Regarding International Trade in Textiles (Multifiber Arrangement, MFA) declares that the standard of "market disruption" is to be used in determining whether import quotas are necessary. The MFA defines "market disruption" as

> a sharp and substantial increase or imminent increase of imports of particular products from particular sources. Such an imminent increase shall be a measurable one and shall not be determined to exist on the basis of allegation, conjecture or mere possibility arising, for example, from the existence of production capacity in the exporting countries;
>
> these products are offered at prices which are substantially below those prevailing for similar goods of comparable quality in the market of the importing country. Such prices shall be compared both with the price for the domestic product at [a] comparable stage of [a] commercial transaction, and with the prices which normally prevail for such products sold in the ordinary course of trade and under open market conditions by other exporting countries in the importing country.

MFA, Annex A, ¶ II(i), (ii). If a party to the MFA perceives possible market disruption, article 3 directs that party to pursue bilateral consultations and negotiations with the exporting country. In the event these consultations prove unavailing, the matter is taken up by MFA internal committees, and, ultimately, by the contracting parties to the General Agreement on Tariffs and Trade (GATT) pursuant to article XXIII of the GATT.

[3] The United States currently is a party to at least 27 bilateral textile agreements with MFA and non-MFA countries. *See, e.g.*, Agreement Relating to Trade in Cotton, Wool and Manmade Fiber Textiles and Textile Products, June 23, 1982, United States-Hong Kong, T.I.A.S. No. 10,420; Agreement Relating to Trade in Cotton, Wool and Manmade Fiber Textiles and Textile Products, Dec. 1, 1982, United States-Republic of Korea; Agreement Relating to Trade in Cotton, Wool and Manmade Fiber Textiles and Textile Products, Dec. 5, 1980, United States-Malaysia, T.I.A.S. No. 10,101.

[4] The United States and the People's Republic of China recently concluded a textile agreement that, in effect, reinstates the September 17, 1980 accord. *See* Agreement relating to Trade in Cotton, Wool and Manmade Fiber Textiles and Textile Products, Aug. 19, 1983, United States-People's Republic of China.

204, and to comply with article 8 of the MFA.[5] The CITA ordered that Chinese textile imports quantitatively be restrained in thirty-three of the treaty categories. *See* 48 Fed. Reg. 2164 (1983). Additionally, during the 3-year period of the Chinese textile agreement, the CITA had requested consultations and/or imposed quantitative restraints in seventy-five other textile categories applicable to numerous supplying countries.[6]

It is these quantitative restraints and requests for consultations that plaintiff challenges in the instant action. Plaintiff's principal contention vis-a-vis the invalidity of the Committee's actions concerns the findings of "market disruption" which is a prerequisite to imposing restrictions under the multi- and bilateral treaties. Plaintiff alleges the CITA found market disruption to exist (or, at least, the threat of it, *see supra* note 2) without sufficient factual data or reasoned determinations.[7] Therefore, the plaintiff contends that the Committee's actions were arbitrary, capricious, an abuse of administrative discretion, contrary to statute and the Constitution, and therefore void. Further, plaintiff objects that the CITA, by failing to provide notice and opportunity for public comment prior to making its market disruption findings, and by not making available its factual justification, violated the fifth amendment and the Administrative Procedure Act (APA), 5 U.S.C. § 553 (1982).

Plaintiff alleges that its members have been seriously aggrieved by the CITA's actions and have suffered irreparable injury. Increased costs, additional delays, irrevocable letters of credit subject to call, and liability on contracts for resale are among the economic injuries the plaintiff alleges its members have suffered as a result of the quantitative restrictions.

Answering the substantive allegations of the complaint, defendants assert that: (1) the terms of United States international agreements are not enforceable by private parties; and, (2) the spirit of the APA has been followed since the meetings of the various senior-level advisory bodies have been open to the public and writ-

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[5] Section 204 of the Agricultural Act of 1956, ch. 327, 70 Stat. 188, 200, as originally enacted, did not give the President authority to control imports from countries not a party to a specific textile agreement. It later became clear that such nonparty countries could frustrate the intent of multilateral agreements by increasing exports. Congress, then, amended section 204, and granted the President authority to regulate imports from countries not a party to certain multilateral agreements. *See* Act of June 19, 1962, Pub. L. No. 87-488, 76 Stat. 104 (codified at 7 U.S.C. § 1854 (1982)). Since the MFA qualifies as a "multilateral agreement . . . among countries accounting for a significant part of world trade in the articles with respect to which the agreement [refers]," 7 U.S.C. § 1854 (1982), the President's statutory authority is triggered to regulate imports of textiles from non-MFA signatories (e.g. China).

[6] During the past few months, at least 59 textile categories have remained subject to quantitative restrictions. *See* Plaintiff's Response in Opposition, at 1.

[7] Most consultative mechanisms in the textile treaties include a requirement that detailed factual statements be offered in support of any request for consultations. In alleging that such detail was not provided in the instant matter, plaintiff relies heavily upon statements made in a Commerce Department Solicitation, No. SA-RSB-82-0011, in connection with a procurement of data from national consumer apparel interests. Plaintiff contends these statements show that the CITA acted upon inaccurate and out-of-date facts when it determined market disruption. Further, plaintiff relies on the statement of a Commerce Department official who, in a letter to plaintiff's counsel, related that available information on the domestic textile industry "too often" is inadequate.

ten comments have been welcomed; moreover, the "foreign affairs exception" exempts the implementation of the textile program from the strict rule-making procedures of the APA. *See* 5 U.S.C. § 553(a)(1) (1982). Defendants' motion to dismiss, however, does not go to the merits of plaintiff's claims, but, as mentioned earlier, raises four threshold questions. Defendants in the motion to dismiss assert (1) that the court lacks jurisdiction over the subject matter of this dispute; (2) that the action should be dismissed for failure to exhaust administrative remedies; (3) that the plaintiff lacks standing to bring this action; and, (4) that the complaint presents nonjusticiable issues and therefore fails to state a claim upon which relief may be granted.

I. Subject Matter Jurisdiction and Standing

Before reaching many of the issues raised by the complaint, the court must determine whether subject matter jurisdiction exists in this case, and whether plaintiff has standing to advance its claims. The plaintiff contends jurisdiction over the subject matter exists by virtue of section 204 of the Act and 28 U.S.C. § 1581(i) (Supp. V 1981).[8] The latter provision confers jurisdiction on this court in matters arising out of laws relating to "embargoes or other quantitative restrictions on the importation of merchandise." *Id.* § 1581(i)(3). Defendants, on the other hand, contend that the court properly may scrutinize this matter only under section 1581(a) after administrative protests to the United States Customs Service (Customs) have been filed and denied. *See* 28 U.S.C. § 1581(a) (Supp. V 1981). In support, the defendants claim section 1581(i) does not create any causes of action that did not exist prior to the enactment of the Customs Courts Act of 1980, Pub. L. 96-417, § 201, 94 Stat. 1727, 1728, and that recourse to section 1581(i) should not be permitted where it would circumvent the requirements of 1581(a).

Section 1581(i) clearly confers exclusive subject matter jurisdiction on this court in regard to the matters that plaintiff has raised in this action. The only question is when this jurisdiction is properly exercisable.

A few general principles bear repetition here. First, a denied protest is not an absolute precondition to the Court of International Trade's exercise of subject matter jurisdiction; "1581(i) does not require the filing or denial of a protest as a prerequisite for the exercise of jurisdiction by this court." *Wear Me Apparel Corp.* v. *United States,* 1 CIT 194, 196, 511 F. Supp. 814, 817 (1981). This proposition

[8] 28 U.S.C. § 1581(i) (Supp. V 1981) provides in pertinent part:

In addition to the jurisdiction conferred upon the Court of International Trade by subsections (a)-(h) of this section and subject to the exception set forth in subsection (j) of this section, the Court of International Trade shall have exclusive jurisdiction of any civil action commenced against the United States, its agencies, or its officers, that arises out of any law of the United States providing for—

(3) embargoes or other quantitative restrictions on the importation of merchandise for reasons other than the protection of the public health or safety; or

(4) administration and enforcement with respect to the matters referred to in paragraphs (1)-(3) of this subsection and subsections (a)-(h) of this section.

Any claim by plaintiff that subject matter jurisdiction exists pursuant to section 204 of the Agricultural Act of 1956 clearly must be rejected.

is supported by 28 U.S.C. § 2637(d) (Supp. V 1981), which states the court shall require exhaustion of administrative remedies (*i.e.*, the filing and denial of a protest) "*where appropriate.*" *Id.* (emphasis added). Although the cases relating to import quotas have not as yet offered a clear delineation as to when the court must require exhaustion of administrative remedies, it is nevertheless clear that these decisions have jurisdiction in strong terms.[9]

In *United States Cane Sugar Refiners' Association* v. *Block*, 3 CIT 196, 544 F. Supp. 883, *aff'd.* 69 CCPA —, 683 F.2d 399 (1982), the plaintiff was challenging a Presidential Proclamation that imposed quotas on sugar imports. The defendants moved to dismiss for lack of subject matter jurisdiction since no protest had been filed and denied by Customs. Because Customs officials would be "legally foreclosed from granting the relief sought," the court held that going through with the administrative process would be a "useless formality" and "futile." Further, regarding the defendants' assault on the court's jurisdiction, the court stated:

> It would, in my judgment, be totally unreasonable—indeed, shocking—to require plaintiff's members to attempt to import over-quota sugar simply in order to obtain a protestable exclusion of the merchandise from entry under 19 U.S.C. § 1514 before seeking judicial review of the validity of the proclamation imposing the quota in a suit for injunctive and declaratory relief.

3 CIT at 201, 544 F. Supp. at 887.

In *Associated Dry Goods Corp.* v. *United States*, 2 CIT 51, 521 F. Supp. 473 (1981), *modified*, 3 CIT 1, 533 F. Supp. 1343, *vacated as moot*, 69 CCPA —, 682 F.2d 212 (1982), the plaintiff challenged a CITA-imposed quota on wool sweaters from China. Subject matter jurisdiction over the dispute was termed "plenary," the principle being "well settled" that the Court of International Trade "has jurisdiction to review agency action which impacts on imports." 2 CIT at 55, 57, 521 F. Supp. at 476, 478. Although the decision was vacated as moot on appeal, and therefore lacks force as precedent, the analysis nevertheless is instructive.

These cases reached diverse results on the merits, but were unanimous in sustaining the court's power to hear the matter. *See Bell* v. *Hood*, 327 U.S. 678, 682 (1946). The decisions also illustrate that exhaustion is not a strict formalistic requirement essential to subject matter jurisdiction in all cases, but, rather, a discretionary tool to be used by the court and informed by prudential considerations which include the effective enforcement of the Customs laws as well as the equities of a given situation. *See* 6A J. Moore,

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[9] *See United States Cane Sugar Refiners' Ass'n* v. *Block*, 3 CIT 196, 201, 544 F. Supp. 883, 887 (exhaustion inappropriate where Customs officials obviously would be powerless to overturn contested actions), *aff'd*, 69 CCPA —, 683 F.2d 399 (1982); *Wear Me Apparel Corp.* v. *United States*, 1 CIT 194, 196, 511 F. Supp. 814, 817 (1981) (exhaustion appropriate "[s]ave in those circumstances where equity requires otherwise"); *Sanho Collections, Ltd.* v. *Chasen*, 1 CIT 6, 11, 505 F. Supp. 204, 207–08 (1980) (where no protestable actions taken by Customs, exhaustion is inappropriate).

Moore's Federal Practice ¶ 57.16, at 57–161 (2d ed. 1982). Hence, at least in cases of quantitative restrictions on imports and resulting embargoes, and in light of strong precedent as well as explicit reference in section 1581(i)(3), the court holds that it possesses subject matter jurisdiction with respect to this matter.

The defendant repeatedly urges that the decision by the Court of Customs and Patent Appeals in *Uniroyal, Inc.* v. *United States,* 69 CCPA —, 687 F.2d 467 (1982), dictates a contrary result on the subject matter jurisdiction issue. Nothing in *Uniroyal,* however, is at odds with the foregoing. In that case, the court noted that "Congress did not intend the Court of International Trade to have jurisdiction over appeals concerning *completed transactions when the appellant had failed to utilize an avenue for effective protest before the Customs Service.*" 69 CCPA at —, 687 F.2d at 471 (emphasis added). Indeed, Judge Maletz reached an identical conclusion in the *Wear Me Apparel* case with respect to merchandise already subjected to agency action. *See* 1 CIT at 198, 511 F. Supp. at 818. No such completed transaction is involved in the instant matter. Moreover, the plaintiff in *Uniroyal* was proceeding solely on the basis of section 1581(i)(4), a provision which, if read overbroadly, would be disruptive to the integrity of the administrative process. Lastly, it should be noted that the Court of Customs and Patent Appeals, less than 2 months before *Uniroyal* was decided, expressly endorsed Judge Newman's sustaining of jurisdiction in the *United States Cane Sugar Refiners' Association* case, which like the instant matter, involved an import quota. The appeals court in its affirmance stated:

> We are persuaded that in this case, involving the potential for immediate injury and irreparable harm to an industry and a substantial impact on the national economy, the delay inherent in proceeding under § 1581(a) makes relief under that provision manifestly inadequate and, accordingly, the court has jurisdiction in this case under § 1581(i).

69 CCPA at —, n.5, 683 F.2d at 402 n.5.

As for the standing issue, plaintiff asserts a right to advance its claims pursuant to 28 U.S.C. § 2631(i) (Supp. V 1981), which reads:

> Any civil action of which the Court of International Trade has jurisdiction, other than an action specified in subsections (a)–(h) of this section, may be commenced in the court by any person adversely affected or aggrieved by agency action within the meaning of section 702 of title 5.

Id. Defendant claims plaintiff's grievances are insufficiently particularized, and that, as a trade association, plaintiff has not alleged injury to itself.

In *United States Cane Sugar Refiners' Association* v. *Block, supra,* the court ruled the plaintiff-trade association possessed standing pursuant to section 2631(i). This decision explicitly was af-

firmed by the Court of Customs and Patent Appeals and is controlling here. *See* 69 CCPA at — n.5, 683 F.2d at 402 n.5, *aff'g* 3 CIT 196, 544 F. Supp. 883 (1982). Plaintiff has standing to sue since its members have a direct interest in purchasing the textile and apparel products in question and have entered into contractual relationships based thereon. The imposition of quantitative restraints on textiles from China clearly inflicts injury in fact on the plaintiff's members since "business relationships . . . could be disrupted and adversely affected by the quotas." 3 CIT at 202, 544 F. Supp. at 887. Accordingly, the court holds that the plaintiff has standing to bring this action.

II. JUSTICIABILITY

The plaintiff characterizes this suit as simple judicial review of administrative action. The defendants and intervenors, on the other hand, contend that this action seeks to inject the judicial branch into the United States' conduct of its foreign affairs. These respective characterizations attempt to illustrate the question of whether the complaint presents justiciable causes of action.

Whether the administration of the nation's textile policy constitutes a foreign or domestic affairs function is unclear. Elements of both are present. It is certain, however, that in imposing the import controls, the CITA was relying directly on section 204 of the Act. It therefore becomes apparent that the court must, at a minimum, scrutinize the statute and the actions taken under it and determine if the scope of the delegation was exceeded. To that extent, the court holds that the plaintiff presents a justiciable issue.

In this sensitive area of textile trade negotiations, foreign and domestic policy considerations obviously overlap. In such a case, a delegation as broad as that contained in section 204 is not uncommon and does not constitute an illegal abdication of legislative power in violation of the delegation doctrine. *See Chicago & Southern Air Lines, Inc.* v. *Waterman Steamship Corp.*, 333 U.S. 103, 109–10 (1948); *United States* v. *Curtiss-Wright Export Corp.*, 299 U.S. 304, 322–24 (1936); *Field* v. *Clark*, 143 U.S. 649, 690–91 (1892); *United States* v. *Yoshida International, Inc.*, 63 CCPA 15, 30, 526 F.2d 560, 578 (1975).

The only question that remains is whether the President's actions (through the CITA) were permissible pursuant to section 204. This court holds that they were.

Section 204 grants extraordinary discretion to the President in negotiating textile trade agreements and regulating textile importation. He may negotiate *"whenever* he determines such action appropriate." 7 U.S.C. ¶1854 (emphasis added). Both parts of section 204 are completely free from procedural requirements, a unique brand of discretion. *See Consumers Union of U.S., Inc.* v. *Kissinger*, 506 F.2d 136, 156 (1974) (Leventhal, J., dissenting), *cert. denied*, 421 U.S. 1004 (1975). The challenged requests for consultations were

taken under authority of valid international agreements. The contested 1983 import controls were taken under authority of the 1962 amendment to section 204. To the extent plaintiff calls into question what the United States views as its prerogatives under international commercial agreements, plaintiff is presenting a nonjusticiable issue. *See Baker* v. *Carr,* 369 U.S. 186, 217 (1962). In the latter circumstance, given the President's wide-ranging discretion in carrying out major multilateral agreements, all he need do is point to the proper authorizing provision and take action rationally related to that provision's objective. The orderly development of trade contemplated by the MFA clearly could be impeded by a sudden infusion of textile imports from China. The CITA's decision to impose quantitative restrictions on these imports is therefore permissible under section 204 "in order to carry out" the MFA. To the extent, therefore, that plaintiff contests the CITA's findings of market disruption and inquires into its reasoning, such claims are beyond proper judicial scrutiny. As the Court of Appeals stated:

> The President's action being authorized by the statute on which he relied, his motives, his reasoning, his findings of facts requiring the action, and his judgment, are immune from judicial scrutiny * * *. In sum, let the President's action be authorized, and let his action be within the authorizing provisions of the law he cites, and the role of the judiciary is at an end.

United States Cane Sugar Refiners' Association v. *Block,* 69 CCPA —, —, 683 F.2d 399, 404 (1982) (citation and footnote omitted). This principle is well embedded in our law. "Whenever a statute gives a discretionary power to any person, to be exercised by him upon his own opinion of certain facts, it is a sound rule of construction that the statute constitutes him the sole and exclusive judge of the existence of those facts." *Martin* v. *Mott,* 25 U.S. (12 Wheat.) 19, 31–32 (1827) (Story, J.).

Conclusion

Because the challenged requests for consultations, and the findings of fact supporting the decision to impose quantitative restrictions on textile imports present nonjusticiable issues, and because the President's actions in imposing quantitative restrictions on textile imports were authorized by and taken in accordance with statute, the defendants' motion to dismiss for failure to state a claim upon which relief can be granted is hereby granted.[10]

[10] Since the complaint is being dismissed as a matter of law because the President's (through the CITA) actions in imposing quantitative restrictions were authorized by statute and because the reasoning behind his determinations in imposing import quotas and requesting consultations represent issues that are nonjusticiable, further discussion of the alleged ground of dismissal for failure to exhaust administrative remedies is not required.

So ordered.

GREGORY W. CARMAN,
Judge.

March 14, 1984.

JUDGMENT

AMERICAN ASSOCIATION OF EXPORTERS AND IMPORTERS—TEXTILE AND APPAREL GROUP, PLAINTIFF, *v.* UNITED STATES, ET AL., DEFENDANTS, AND AMERICAN FIBER/TEXTILE/APPAREL COALITION, DEFENDANT-INTERVENOR

Court No. 82-11-01581

Gregory W. Carman, *Judge.*

This case having been duly submitted for decision and the Court, after due deliberation having rendered a decision herein; now in conformity with said decision,

It is hereby ordered, adjudged, and decreed: that defendants' motion to dismiss for failure to state a claim upon which relief can be granted is granted.

Date: March 14, 1984.

New York, New York.

GREGORY W. CARMAN,
Judge.

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The following abstracts of decisions of the Unit
published for the information and guidance of offi
decisions are not of sufficient general interest to pri
to Customs officials in easily locating cases and traci

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Abstracts

d Protest Decisions

DEPARTMENT OF THE TREASURY, *April 4, 1984.*

United States Court of International Trade at New York are officers of the Customs and others concerned. Although the o print in full, the summary herein given will be of assistance racing important facts.

WILLIAM VON RAAB,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED
				Item No. and R
P84/39	Ford, J. March 8, 1984	Tropicana Products, Inc.	83-8-01110	Item 165.35 35 cents per gall
P84/40	Ford, J. March 12, 1984	North American Foreign Trading Corp.	82-12-01723	Item 682.95 8.5%
P84/41	Boe, J. March 13, 1984	Jet Sonic Corporation	81-4-00460	Item 715.05 716.10, 716.11 through 716.1 716.18, 720.24 720.28, 740.30 740.34, 740.38 740.38, 774.55 774.60 & 791. Rates of duty depending up the date of e
P84/42	Boe, J. March 13, 1984	Sundial Enterprises, Ltd.	81-2-00209	Item 715.05, 716.10, 716.11 throug 716.16, 716.1 720.24, 720.2 740.30, 740.3 740.35, 740.3 774.55, 774.6 761.54 Rates of duty depending up the date of e

ESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
and Rate	Item No. and Rate		
.35 35 per gallon	Specific rate of duty and the formula for refunds is (35 cents× NEGC×7)—(20 cents× NEGC×4.6271) divided by 3	Agreed statement of facts	Tampa, FL Concentrated orange juice
.95	Item 800.00 Free of duty	Judgment on pleadings	New York Batteries
.05 , 716.11 h 716.16, , 720.24, , 740.30, , 740.35, , 774.55, & 791.54 of duty ding upon te of entry	Item 688.36 5.3%	United States v. Texas Instruments, Inc. 69 CCPA—, C.A. 81-23, 673 F.2d 1375 (1982)	New York Watches and fittings
.05, through , 716.18, , 720.28, , 740.34, , 740.38, , 774.60 & of duty ding upon te of entry	Item 688.36 5.5% (if entered before 1980) or 5.3% (if entered during 1980)	United States v. Texas Instruments, Inc. 69 CCPA—, C.A. 81-23, 673 F.2d 1375 (1982)	New York Watches and fittings

P84/43	Boe, J. March 13, 1984	Sundial Enterprises, Ltd.	81-2-00209	Item 715.05, 716.10, 716.11 through 716.16, 716.18, 720.24, 720.28, 740.30, 740.34, 740.35, 740.38, 774.55, 774.60 & 761.54 Rates of duty depending upon the date of entry
P84/44	Boe, J. March 13, 1984	Temlex Industries	82-2-00214	Item 715.05, 716.10, 716.11 through 716.16, 716.18, 720.24, 720.28, 740.30, 740.34, 740.35, 740.38, 774.55, 774.60 & 761.54 Rates of duty depending upon the date of entry
P84/45	Boe, J. March 13, 1984	Temlex Industries	82-3-00264	Item 715.05, 716.10, 716.11 through 716.16, 716.18, 720.24, 720.28, 740.30, 740.34, 740.35, 740.38, 774.55, 774.60 & 791.54 Rates of duty depending upon the date of entry

Item 688.36 5.5% (if entered prior to 1980) or 5.3% (if entered during 1980)	United States v. Texas Instruments, Inc. 69 CCPA—, C.A. 81-23, 673 F.2d 1375 (1982)	New York Watches and fittings
Item 688.36 5.5% (if entered prior to 1980) or 5.3% (if entered during 1980)	United States v. Texas Instruments, Inc. 69 CCPA—, C.A. 81-23, 673 F.2d 1375 (1982)	New York Watches and fittings
Item 688.36 5.3%	United States v. Texas Instruments, Inc. 69 CCPA—, C.A. 81-23, 673 F.2d 1375 (1983)	New York Watches and fittings

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED
				Item No. and Rate
P84/46	Rao, J. March 14, 1984	Supreme Leather Goods Corp., et al.	79-8-01208	Item 656.25 1979 and prior 25% 1980 23.1% 1981 21.3% 1982 19.4% 1983 17.5%
P84/47	Boe, J. March 14, 1984	Jet Sonic Corporation	81-5-00541	Item 715.05, 716.10, 716.11 through 716.16, 716.18, 720.24, 720.28, 740.30, 740.34, 740.38, 774.55, 774.60 & 791.54 Rates of duty depending upon the date of entry.
P84/48	Boe, J. March 14, 1984	Sundial Enterprises Ltd.	81-4-00447	Item 715.05, 716.10, 716.11 through 716.16, 716.18, 720.24, 720.28, 740.30, 740.34, 740.38, 774.55, 774.60 & 791.54 Rates of duty depending upon the date of entr

SED nd Rate	HELD Item No. and Rate	BASIS	PORT OF ENTRY AND MERCHANDISE
prior % % %	Item 745.68 Duty refund formula (duty rate for 656.25—duty rate for 745.68)×(0.43×$value)	Agreed statement of facts	New York Clasps or parts thereof
rough 6.18, 0.28, 0.34, 4.55, 791.54 duty g upon of	Item 688.36 5.3%	United States v. Texas Instruments, Inc. 69 CCPA—, C.A. 81-23, 673 F.2d 1375 (1982)	New York Electronic watch entireties
rough 6.18, 0.28, 0.34, 4.55, 791.54 duty g upon of entry	Item 688.36 5.5% (if entered before 1980) or 5.3% (if entered during 1980)	United States v. Texas Instruments, Inc. 69 CCPA—, C.A. 81-23, 673 F.2d 1375 (1982)	New York Electronic watch entireties

P84/49	Boe, J. March 14, 1984	Sundial Enterprises Ltd.	81-8-01058	Item 715.05, 716.10, 716.11 thr 716.16, 716 720.24, 720 740.30, 740 740.38, 774 774.60 & 7 Rates of d depending the date o
P84/50	Boe, J. March 14, 1984	Sundial Enterprises Ltd.	82-2-00240	Item 715.05, 716.10, 716.11 thr 716.16, 716 720.24, 720 740.30, 740 740.38, 774 774.60 & 7 Rates of d depending the date o
P84/51	Boe, J. March 14, 1984	Superscope, Inc.	81-11-01531	Item 720.18 $1.04 each 14.8% Item 720.1 cents each 14.8%
P84/52	Boe, J. March 14, 1984	Temlex Trading Corp.	82-2-00246	Item 715.05, 716.10, 716.11 thr 716.16, 716 720.24, 720 740.30, 740 740.38, 774 774.60 & 7 Rates of d depending the date o

715.05, .10, .11 through .16, 716.18, .24, 720.28, .30, 740.34, .38, 774.55, .60 & 791.54 es of duty ending upon date of entry	Item 688.36 5.5% (if entered before 1980) or 5.3% (if entered during 1980)	United States v. Texas Instruments, Inc. 69 CCPA—, C.A. 81-23, 673 F.2d 1375 (1982)	New York Electronic watch entireties
715.05, .10, .11 through .16, 716.18, .24, 720.28, .30, 740.34, .38, 774.55, .60 & 791.54 es of duty ending upon date of entry	Item 688.36 5.5% (if entered prior to 1980) or 5.3% (if entered during 1980)	United States v. Texas Instruments, Inc. 69 CCPA—, C.A. 81-23, 673 F.2d 1375 (1982)	New York Electronic watch entireties
720.18)4 each plus 3% m 720.16 69 ts each plus 3%	Item 678.50 4.8%	United States v. Texas Instruments, Inc. Appeal No. 81-23 (1982)	Los Angeles, CA Clocks
715.05, .10, .11 through .16, 716.18, .24, 720.28, .30, 740.34, .38, 774.55, .60 & 791.54 es of duty ending upon date of entry	Item 688.36 5.3%	United States v. Texas Instruments, Inc. 69 CCPA—, C.A. 81-23, 673 F.2d 1375 (1982)	New York Electronic watch entireties

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED
				Item No. and
P84/53	Newman, S.J. March 14, 1984	Kyocera International, Inc.	77–3–00318	Item 685.90 8.5%, 8.1%, 7.7%, or 7.3 depending u the date of e
P84/54	Newman, S.J. March 14, 1984	Kyocera International, Inc.	78–1–00001	Item 685.90 8.5%, 8.1%, 7.7%, or 7.3 depending u the date of e
P84/55	Newman, S.J. March 14, 1984	Kyocera International, Inc.	78–10–01789	Item 685.90 8.5%, 8.1%, 7.7%, or 7.3 depending u the date of e
P84/56	Newman, S.J. March 14, 1984	Kyocera International, Inc.	78–10–01930	Item 685.90 8.5%, 8.1%, 7.7%, or 7.3 depending u the date of e

SESSED o. and Rate	HELD Item No. and Rate	BASIS	PORT OF ENTRY AND MERCHANDISE
5.90 8.1%, or 7.3% ding upon ate of entry	Item 687.60 6.0%, 5.8%, 5.6% or 4.24% depending on the date of entry	Kyocera International v. United States (Slip Op. 81-79), 527 F. Supp. 337 (1981), Aff'd. 681 F.2d 796 (1982)	Los Angeles, CA Multilayer electronic crystal components
5.90 8.1%, or 7.3% ding upon ate of entry	Item 687.60 6.0%, 5.8%, 5.6% or 4.24% depending upon the date of entry	Kyocera International, Inc. v. United States (Slip Op. 81-79), 527 F. Supp. 337 (1981), Aff'd. 681 F.2d 796 (1982)	Los Angeles, CA Multilayer electronic crystal components
5.90 8.1%, or 7.3% ding upon ate of entry	Item 687.60 6.0%, 5.8%, 5.6% or 4.24% depending upon the date of entry	Kyocera International, Inc. v. United States (Slip Op. 81-79), 527 F. Supp. 337 (1981), Aff'd. 681 F.2d 796 (1982)	Los Angeles, CA Multilayer electronic crystal components
5.90 8.1%, or 7.3% ding upon ate of entry	Item 687.60 6.0%, 5.8%, 5.6% or 4.2% depending upon the date of entry	Kyocera International, Inc. v. United States (Slip Op. 81-79), 527 F. Supp. 337 (1981), Aff'd. 681 F.2d 796 (1982)	Los Angeles, CA Multilayer electronic crystal components

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DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATIO
R84/90	Re, C.J. March 13, 1984	Metasco, Inc.	74-9-02467	Export value
R84/91	Landis, S.J. March 13, 1984	A. Johnson & Co., Inc.	74-2-00428	Export value

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SIS OF UATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
alue	Appraised values shown on the entry papers less those additions which were included in said appraised values to reflect currency revaluation	Agreed statement of facts	New York Not stated
alue	Appraised values	Agreed statement of facts	Houston and Port Arthur, TX Not stated

Decision of United States Court of Appeals for the Federal Circuit

83-1177 Rohm & Haas Company v. The United States—Flexible Plastic Sheets—Plastics—Acrylic Sheets—Clear and Colored—Duty Free Entry—Generalized System of Preferences—TSUS—Appeal from Slip Op. 83-48, filed June 16, 1983, decided for the appellee February 9, 1984, issued as a mandate March 2, 1984.

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